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303 NLRB No. 124

D--2124
Cookeville, TN

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE DURIRON COMPANY, INC.

and

Case 26--CA--14448

UNITED STEELWORKERS OF AMERICA,
AFL--CIO--CLC

July 24, 1991

DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Devaney

On May 15, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 26--RC--7168. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On June 14, 1991, the General Counsel filed a Motion for Summary Judgment. On June 18, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 2, 1991, the Respondent filed a brief with the Board responding to the Notice to Show Cause, opposing the General Counsel's motion, and containing a Motion to Dismiss Complaint.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election and the Board's disposition of a challenged ballot in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the General Counsel's Motion for Summary Judgment, and deny the Respondent's Motion to Dismiss Complaint.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation, maintains an office and place of business in Cookeville, Tennessee, where it is engaged in the manufacture of fluid control valves. During the 12 months preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business, sold and shipped from the above facility products, goods, and materials valued in excess of $50,000 directly to points located outside the State of Tennessee. During the same period, the Respondent also purchased and received at its facility products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Tennessee. We find

that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held July 21, 1989, the Union was certified on February 22, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

> All hourly production and maintenance employees, leadpersons and plant clerical employees employed by the Employer at its Cookeville, Tennessee facility excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since on or about April 8, 1991, the Union has requested the Respondent to bargain and, since on or about April 19, 1991, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after April 19, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.